

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HMM CO. LTD.,

Plaintiff,

v.

LOUIS DREYFUS CO. FREIGHT ASIA PTE
LTD.,

Defendant.

IN ADMIRALTY

CASE NO.: 21-cv-01561 MJP

**ORDER APPOINTING MARINE
LENDERS SERVICES, LLC AS
SUBSTITUTE CUSTODIAN**

Having reviewed Plaintiff's Motion for the Appointment of a Substitute Custodian and the supporting Declarations of Buck Fowler, Jr., and good cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff's Motion is GRANTED.
2. Marine Lenders Services, LLC, is appointed to act as substitute custodian of the vessel M/V NIKOLAS XL (IMO 9311165), her engines, tackle, gear, electronics, appurtenances, etc., (hereafter, the "Vessel") during *custodia legis* on behalf of this Court, in place and instead of the United States Marshal, until further order of the Court.
3. The Vessel has been or will be arrested by the United States Marshal. Immediately following arrest of the Vessel, the United States Marshal for this District transfer custody of the Vessel to substitute custodian Marine Lender Services, LLC. The Vessel is presently located adjacent to the Port of Seattle, and will remain in this location while in the

1 custody of the substitute custodian, except as provided for herein or as further ordered by the
2 Court.

3 4. Marine Lenders Services, LLC, as substitute custodian, shall see to and be
4 responsible for the safekeeping of the Vessel. The duties of the substitute custodian include, but
5 are not limited to, ensuring that there is an adequate, safe moorage for the vessel. The substitute
6 custodian is not required to have a person live on board the vessel, but an officer or authorized
7 agent of the substitute custodian shall go on board the vessel, from time to time to carry out the
8 duties of substitute custodian. No other person shall be allowed to enter on the vessel except as
9 provided for herein or as otherwise expressly authorized by order of this Court.

10 5. Upon transfer of custody of the Vessel to the substitute custodian by the United
11 States Marshal, the Marshal shall not be liable for any loss occurring while the Vessel remains in
12 the custody of the substitute custodian and the substitute custodian shall indemnify and hold the
13 plaintiff and the Marshal harmless from any and all claims arising out of the substitute
14 custodian's possession and safekeeping of the Vessel.

15 6. All reasonable expenses of the United States Marshal shall be administrative
16 expenses in this action and a first charge to the Vessel herein, to be paid to the Marshal prior to
17 the release of the Vessel or distribution of the proceeds of its sale.

18 7. All reasonable expenditures which may be incurred by the plaintiff and the
19 substitute custodian, or by any party advancing funds to the substitute custodian, including, but
20 not limited to, all insurance, towage, transport, and other costs of moving the Vessel to a suitable
21 location, in safekeeping and maintaining the Vessel while it is in *custodia legis*, and costs of
22 maintaining adequate insurance on the vessel while it is in *custodia legis* shall be administrative
23 expenses in this action and a first charge on the Vessel, to be paid prior to the release of the
24 Vessel or distribution of the proceeds of its sale.

25 8. During *custodia legis*, Marine Lenders Services, LLC, shall maintain appropriate
26 legal liability insurance providing a minimum coverage of One Million Dollars

1 (USD \$1,000,000), which expenses for insurance shall constitute administrative expenses herein.

2 9. Upon transfer of the Vessel from the United States Marshal to Marine Lenders
3 Services, LLC, the Vessel may remain at anchorage at her current location, or other suitable
4 location. Marine Lenders Services, LLC, shall notify the office of the Marshal that the Vessel is
5 to be moved and will notify the office of the Marshal again when the Vessel has been moved.

6 10. Marine Lenders Services, LLC, as substitute custodian, may if necessary offload
7 any cargo aboard the Vessel and arrange for storage of the same at a suitable storage facility.
8 The substitute custodian shall notify the office of the U.S. Marshal prior to engaging in any such
9 offloading of cargo and again upon the completion of any such offloading.

10 11. Marine Lenders Services, LLC, as substitute custodian, may if necessary offload
11 any fuel and arrange for disposal of the same. The substitute custodian shall notify the office of
12 the U.S. Marshal prior to engaging in any such offloading and again upon the completion of any
13 such offloading.

14 12. Marine Lenders Services, LLC, as substitute custodian, may, but is not required
15 to, retain a marine engineer familiar with the Vessel and to take him or her on board the Vessel
16 with authorized agents of Marine Lenders Services, LLC to assist in the securing of the Vessel.

17 13. Marine Lenders Services, LLC, as substitute custodian, may, but is not required
18 to, retain such services as are necessary to clean the interior and/or exterior of the Vessel, remove
19 food products with such services to be performed under the supervision of the substitute
20 custodian.

21 14. Plaintiff shall arrange to pay charges for moorage of the vessel and the fees, costs,
22 and legal liability insurance premiums of the substitute custodian and shall reimburse the
23 substitute custodian for such other costs as may be incurred in conduction of the inventory of the
24 equipment on board, in securing the Vessel, in having the Vessel cleaned, in moving the Vessel,
25 and/or in offloading any cargo from the Vessel.

1 15. The substitute custodian may permit boarding and inspection of the vessel by
2 marine surveyors, representatives of plaintiff, defendant and prospective purchaser's in order to
3 determine the vessel's condition and value at a date and time convenient to the substitute
4 custodian. All costs of such boarding and inspections shall be paid by such prospective and third
5 party purchasers directly to Marine Lenders Services, LLC prior to boarding, such expenses shall
6 not be deemed administrative costs in custodial herein. All persons entering on board the vessel
7 shall execute a waiver and release in the form attached hereto. The substitute custodian or its
8 employees shall be in attendance at all times of such boarding.

9 16. All crew members shall remain on board the vessel and continue to operate and
10 maintain all ship systems pending further order of this Court.

11 17. During *custodia legis* the substitute custodian shall not permit repairs or changes
12 to be made to the Vessel, except for routine maintenance required for the Vessel's safekeeping,
13 or in emergency situations, without an order of this Court.

14 18. Plaintiff's attorney shall send a copy of this Order to the owner of the Vessel at
15 the last address known by plaintiff.

16
17 DATED this 19th day of November, 2021.

18 

19 Marsha J. Pechman
20 United States Senior District Judge

21
22 Presented by:

23 NICOLL BLACK & FEIG, PLLC

24
25 / s/ Chris P. Reilly

26 Chris P. Reilly, WSBA No. 25585
Attorneys for Plaintiff